IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10191 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? NO

2 To be referred to the Reporter or not ? NO

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

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KHUSHBA SEEMA NAVABSING - Petitioner(s)
Versus
THE CONTROLLER OF EXAMINATION & 1 - Respondent(s)

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Appearance :
MR BALRAM D JAIN for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
MR DC DAVE for Respondent(s) : 1,
MR MP SHAH for Respondent(s) : 2,
MS. KRUTI M SHAH for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 02/08/2007

ORAL JUDGMENT

1 Rule. Learned Advocates appearing for the respective respondents waive service. Considering the scope of controversy the petition is taken up for final hearing and disposal today.

2 The petitioner-student was a student of Shri Surat Jilla Sahakari Bank Commerce College & Sayan Sahakari Khand Udyog Arts College, Olpad, Dist. Surat for F.Y.B.Com, wherein medium of instruction was Gujarati, and the compulsory subject was also Gujarati language. After having cleared First Year B. Com Examination the petitioner obtained admission for the first term for Academic Year 2006-2007 in S.Y.B.Com but subsequently she shifted to Surat and obtained admission with D.R. Patel & R.B. Patel Commerce College, New City Light Road, Bharthana, Surat – 395 017 in S.Y.B.Com. It is an accepted fact that in the second College viz. D.R.Patel & R.D.Patel Commerce College the medium of instruction is English and English language is a compulsory subject.

3 It was in April, 2007 according to the petitioner that the petitioner was informed orally that the petitioner is not entitled to appear at University Examination for S.Y.B. Com

because the petitioner has not been enrolled by respondent No.1 – University. It appears that respondent No.2 – College wrote to the University seeking permission on behalf of the petitioner to change the compulsory subject of English language but the said request was not granted by the University in light of the prevalent Rules. It is at this stage that the petitioner has approached this Court.

4 Upon notice having been issued, respondent No.1 University has put in appearance and tendered Affidavit-in-Reply. Relevant paragraphs being paragraphs No. K & L. of the said affidavit read as under :

> *"K. At this juncture, apropos and in furtherance of the aforesaid, it deserves to be mentioned that if the request of the petitioner as well as the said College at Bharthana is to be accepted, the same would lead to a situation, wherein the petitioner, who has not studied the subject of English for the first year of B. Com., would be permitted to appear at the second year of B.Com., with the subject of English. As against this, if the petitioner is to be permitted to continue with her original subject of Gujarati for the second year of B. Com., as she opted for the same in the first year of B. Com., it*

would lead to a situation, wherein, without prosecuting studies for the subject of Gujarati for the second year of B.Com., she would be permitted to appear at the concerned examination for the same. As against this, if the alternative suggested by the said college at Bharthana was to be accepted, and, thereupon, the petitioner was to be permitted to opt for ATKT in respect of the said subject of English, it would lead to a situation, whereunder, without attending classes for the second year of B. Com., for the subject of English, she would be permitted to appear subsequently at the concerned examination for the said subject of English;

L. Thus, in substance, keeping in mind all the attending circumstances, an academic decision was taken by the University not to accede to the said request of the petitioner and, thereupon, not to permit the petitioner to appear at the said examination for second year of B.Com., for the academic year 2006-2007".

5 Thus it is apparent that the petitioner is not entitled as a matter of right to seek change of compulsory subject but on

suggestion made by this Court, respondent No.1-University has come out with two options available to the petitioner so as to ensure that the career of the petitioner student is not jeopardized. On behalf of respondent No.1 – University Mr.D.C.Dave has submitted that either the petitioner may revert back to her old College at Olpad or the petitioner may appear at the October trial of examinations in the compulsory subject of English language for F.Y.B. Com., and also will be permitted to appear at the October trial of S.Y.B.Com., for all the subjects. The second option is subject to the petitioner clearing the compulsory subject of English Language Examination at October trial for F.Y.B. Com. and till that point of time result of S.Y.B. Com. shall be withheld by respondent No.1-University.

6 Mr.B.D.Jain, learned Advocate appearing on behalf of the petitioner states, under instructions, that the petitioner student is ready and willing to exercise the second option and is agreeable to the condition imposed by respondent No.1 – University. In other words, the petitioner shall take examinations for all subjects in S.Y.B. Com. at October trial and in the compulsory subject of English language for F.Y.B. Com. at the October trial and shall await the result of S.Y. B.

Com. which will be dependant upon the petitioner clearing the English Language Examination for F.Y.B. Com.

7 In the circumstances, the petitioner is directed to appear at the October trial in all subjects for S.Y. B. Com. and in compulsory subject of English language for F.Y. B. Com. Respondent No.1 – University shall permit the student to take examinations as aforesaid and shall withhold the result of S.Y.B.Com. till the point of time the petitioner clears examination in compulsory subject of English language for F.Y. B. Com.

8 In the result, the petition is allowed in the aforesaid terms. Rule made absolute. Direct service permitted.

Sd/-
(D.A. Mehta, J.)

m.m.bhatt